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## The Non-Perplexity of Human Rights.

*Jayan Nayar\**

### Abstract.

*What do we (think we) speak about when we speak of Human Rights? Mostly we think that we speak of the fate of the vulnerable Human-being in her beingness in the world. Given this assumption, three recurring perplexities- of territoriality, parochiality-imperiality and coloniality – appear to preoccupy much critical thinking on the subject. I suggest a different reason underpins the invention and operation of Human Rights. I argue that Human Rights, as a (post)colonial technology of subjectification, operates in perverse coherence, to rationalize and regulate the global (b)ordering of differentiated subject-beingness: of license, containment and abandonment. As such efforts that aim to rescue Human Rights for the human-subject merely reinforce the adaptive operations of global governmentality to norm-alise and resettle the World. Against this I suggest a return to an anti-colonial philosophical orientation of desubjectification.*

### What Do We (Think We) Speak About When We Speak of ‘Human’ Rights?

Much is said and written on Human Rights. With the best of intentions. And an abundance of anguish. For all the talk of this being the ‘Age of Rights’,<sup>1</sup> the everyday, the banal, the painful truth of Human Rights is that being ‘Human’ in the world is embroiled still in the normalities of inflicted cruelty and deprivation. As Upendra Baxi pointedly reminds us, ‘[o]ne may ... be human without having food to eat, water to drink, a shelter to live in, and a human agency fully deprived.’<sup>2</sup>

And so we see, much critical thinking on the subject of Human Rights is moved to find ways to bridge this divide between the proclaimed aspirations and the grounded actualities of being Human. Proliferation however does not equate with clarity. From the rich and diverse literature we observe that the more that is said about Human Rights, the less certain its meaning becomes; indeed, it has been noted that the universal ‘fact of Human Rights is marked by its ‘intellectual promiscuity’,<sup>3</sup> the ‘irony’ of its ‘universality’, its ‘fragmentation’ in meaning, effects and aims.<sup>4</sup> Many registers of Human Rights have after all been identified,<sup>5</sup> and in so many disciplinary dialects are arguments about Human Rights conducted, truths propounded, judgements made, often in conversations with little reference one with another. The hope, presumably, is that all this

continued contemplation, conversation, debate, clarification, serves a useful purpose, to bring clarity, coherence, perhaps even truth and energy, towards...what?

Whilst it might appear to be a venture into the obvious, precisely because it appears to be so obvious, I begin by asking the following: *what do we (think we) speak about when we speak of 'Human Rights'?*

It seems to me we have somewhat assumed the obviousness of the answer: *we speak of the fate of the (venerable, vulnerable) 'Human' subject being-in-the-world, as subject in-the-world, in being-fully-in-the-world, in justice and well-being.* Take Gearty and Douzinas, for example:

‘Human rights inscribe in law and remind law of its necessary and impossible commitment to an *unconditional justice*.’<sup>6</sup>

Or, Jack Donnelly:

‘[H]uman rights are a social practice that aims to realize a particular vision of human dignity and potential by institutionalizing certain rights.’<sup>7</sup>

Or, Upendra Baxi:

‘[T]he *prime function* of contemporary human rights theory is to persuade oneself and everyone in a territorially bounded society/community that *the human is that entity* to which everyone owes duties of equal respect and full recognition of worth, regardless of sex, religion, race, residence and like features.’<sup>8</sup>

These are indeed thinkers from quite different ideological and political orientations and it is not my intention to suggest that they in any way speak the same language of Human Rights. And yet, notwithstanding their many differences we see they share a common conviction - that Human Rights pertains to the condition of human being-ness - and it is this that interests me. Examples of such statements on the underlying ‘human’ content of Human Rights – even as it is ‘betrayed’, more so because it is betrayed – are plentiful, notable for their apparent assumption of the obviousness of this truth.<sup>9</sup> Hence, abundant in the critical literature are the incessant efforts to

engage with perplexities and paradoxes, betrayals and challenges, towards some recovery of a true possibility of/for Human Rights in the face of the inhumanities of the human condition.<sup>10</sup>

Three themes recur, it seems to me, as the backdrop to these many meditations:

- 1) The *territoriality* of ‘universal’ Human Rights: the post-Arendtian realisation that rather than applying to all Humans by virtue of some universal quality of being Human, the concept is inescapably linked to state-territorial contexts of political belonging and its rationalities of inclusions and exclusions, rights and rightlessness.<sup>11</sup> The question that follows is how to (re)think Human Rights out of the bordered geopolitics of inclusion and exclusion in a world of a globalised, territorially-bounded and segregated ‘sovereign’ state system?
- 2) The *parochiality and imperialism* of Human Rights: the ‘postcolonial’ recognition that rather than embracing all of Human-beingness in its infinite diversity, the concept is bound by Eurocentric onto-epistemologies of (Hu)Man, and as such is complicit in the continuing violence of othering and dehumanisation.<sup>12</sup> The question that follows is how to (re)think Human Rights through other ‘pluriversal’ epistemological lenses that open up Humanity from the closures of coloniality (of racism, patriarchy and hetero-sexism).
- 3) The *governmentality* of Human Rights: the post-Foucauldian/Agambenian realisation that whilst the language and practice of rights might enable assertions of subjectivity – of recognition and redistribution – these are determined by extant rationalities of economic domination, bureaucratic management/enforcement and judicial determination that comprise the complex totality of biopolitical governmentality.<sup>13</sup> The question that follows is how to (re)think Human Rights out of the biopolitical traps of governmentality that return transformatory assertions of emancipation to the regulatory logics of management and control?

In short, the critical Human Rights thinker is burdened thus: how to balance the ever-pervasive anguish over the ‘facts’ of Human Rights betrayed with the continuing hope regarding its perceived promise? Ratna Kapur provides an eloquent, moving response:

‘My critique of human rights is intended to be productive and to articulate a different cosmology within which to understand the place of human rights in our contemporary

world. ...the battle to recapture *the progressive and transformative terrain of human rights* cannot be simply ‘won’, but *the centring of excluded subjects, excluded zones and excluded histories* can bring the project back to a space of greater optimism and lesser despair. Ultimately, it is an effort to *put some life back into a project in desperate need of resuscitation and to give this body a soul.*<sup>14</sup>

Thus concern for the Human and her vulnerability – her full beingness as such – remains presumed as founding the invention and authorship of Human Rights, the assumption is that the struggle for the humanity of the Human (however conceptualised, however ascribed) remains at core the intent of Human Rights, to be protected from dilution, to be rescued from betrayal, to be liberated from perplexity. It must be so, or so we assume. This is perhaps the reason why, to the hopeful Human Rights thinker, Hannah Arendt’s aporetic insights into the tautology of Human Rights is so troubling, and why Giorgio Agamben’s subsequent equation of Human Rights with the biopolitical inscription of ‘bare life’ into subjectivity under sovereignty so disturbing.<sup>15</sup> This is then also why possible rescue from such philosophical (let alone existential) despair are so eagerly embraced; why we may be comforted by Peter Fitzpatrick’s thesis of ‘indeterminacy’ which asserts that the emancipatory possibilities of Human Rights meanings are never fully ‘contained’ even as they are subject to power’s sovereignty of judgement;<sup>16</sup> why we may find inspiring Upendra Baxi’s assertion of a ‘right to be Human’,<sup>17</sup> and his delineation of a struggle-based insurgent politics *for* Human Rights in opposition to the bureaucratic and governmental machinations of the politics *of* Human Rights;<sup>18</sup> why we might keenly embrace Jacques Ranciere’s elegant rescue of the dissensual ‘subject of the Rights of Man’;<sup>19</sup> why also we increasingly witness a move away from any search for ‘foundational’ or ontological groundings, in favour of praxiological assertions of Human Rights as political action, always contextual, always in paradoxical tension, never really having to explain away the perplexities that appear to confound the idea.<sup>20</sup> But the problems persist.

For all these diverse efforts of reimagination and recovery, we know that the everyday regimes of cruelty and dispossession operate in actual worlds of normalised power, not in intellectual theatres of idealised and choreographed Human Rights imagination and exhortation.<sup>21</sup> To acknowledge this actuality of wrongs is not to deny the ‘fact’ of Human Rights; quite the opposite. Human Rights does indeed operate in the world; indeed it is critical to the operation of *this* World. For many the perceived distance between the presumed promise of Human Rights and the actualities of wrongs and suffering remains understood as betrayal, a perplexity, the very impetus for rescue and for greater efforts toward redemption.<sup>22</sup> I understand it differently. Setting aside the ‘culture of sentimentality’,<sup>23</sup> and our ‘mourning’ for the perceived betrayals of Human Rights,<sup>24</sup> I think it

important to ask again the question that Talal Asad posed: what do Human Rights do in the world?<sup>25</sup> I intend in this essay to address precisely this matter.

My argument begins by understanding Human Rights as a philosophical invention, imagined within the exigencies of the world. What Human Rights do in the world therefore is intrinsic to its very invention. Viewed in this way, Human Rights is understood as having emerged into the possibilities of imagination not out of metaphysical abstraction but material contingency, not out of any quest or desire for some metaphysical-political truth of the 'Human-subject', not for the ascription of some universal 'equality' or 'freedom' or 'dignity' or 'justice', but as an onto-epistemological *norm-ing* of the world of social relations. In what follows, I challenge the assumption that the essential reason of Human Rights concerns the venerability and vulnerability of the 'Human'-subject. In my view, the sense of perplexity, paradox, betrayal, that follow critical engagements with the operation of Human Rights all result from a fundamental categorical error: that the fate of the 'Human'-subject lies at the core of the intent of Human Rights.<sup>26</sup> Rather, a more mundane, and profane, reason dictates the inscription of 'Rights' onto the 'Human', a reason that continues to coherently inform the materiality of the operation of Human Rights, as fact, in and of the *colonial-modern* world.<sup>27</sup>

Human Rights, I argue, is concerned with the reason of *(b)ordering*; it operates to differentially (b)order the colonality of power/being in the world. By (b)ordering, I mean a system of inscriptions and emplacements which define the structures that regulate and enforce 'Human'-beingness-in-the-world. (B)ordering in this sense is the combined operation of both discursive disciplines (the invention/discoveries of categorical names, 'theories' of associational meanings, vocabularies of (un)belonging and govern-ment etc) and physical practices (the erection and policing of borders/fences/walls etc) that configure the World as known and understood as being. And by colonality - which is more than just the 'parochiality' of the Eurocentric 'history' and epistemology<sup>28</sup> - I mean the operation of power/knowledge as a totalizing structure that normalises and enforces the World (fully as *one* World) of inscribed (differentiated) subject-beingness.<sup>29</sup> My argument therefore can be stated as follows: from its origins in the 'natural law' of conquests and its subsequent reinvention in its 'Enlightenment'-form of propertied-Rights, through to its 'universalisation' and 'globalisation' within the post UN Charter imagination, to its present neoliberal trade-related, market-friendly manifestations (as Baxi has aptly summed it),<sup>30</sup> the subjectification of (Hu)Man through 'Rights' has served as a colonial-modern technology that constructs and rationalises a (globalised) regime of (b)ordering bodies *differentially* (made to be)-

in-the-World'. Simply, Human Rights is an invention not of the inclusion of all humanity as equal, but of its enforced differentiation. Contrary to much Human Rights theology therefore, there is not one (reified, idealized) universal subject of/for Human Rights awaiting a becoming or redemption. Instead the invention of Human Rights, as a technology of 'right-ing' the Human-(made-)subject,<sup>31</sup> enables the colonial-modern (b)ordering of a threefold differentiated materiality of unequal being-ness in the world: of *license, containment, and abandonment*. This, I argue, is the work of Human Rights to do.

This argument I make regarding Human Rights is not however intended as an advocacy of futility. More may be told of stories of resistance than the imagination and vocabulary of Human Rights allow. It is often the case that we mistake, and equate, human struggle with the struggle for Human Rights. Hence we see the ready subsumption of diverse human refusals against operations of dispossession and subjugation by well-intentioned Human Rights thinkers/workers into registers of *subjectification*: the critical Human Rights thinker is often preoccupied with the presumed emancipatory possibility of 'becoming-subject' into the 'political' space. It is this work of subjectification that is presumed to be the onto-epistemological labour of Human Rights to perform. In the concluding section of the essay, I present a different reading of struggle to supplement my argument, one which does not suffer the anxiety that Human Rights exhausts the possibilities of human futures. Instead I hint at an *anti-colonial* orientation of *desubjectification* that might better enable us to oppose the totalizations of global coloniality.

### **A Different Telling of the Origin-Story.<sup>32</sup>**

My argument begins with an understanding of Human Rights as a socio-political and legal technology in the world rather than as imagination and expression of some reified 'World Spirit' in History.<sup>33</sup> As I argue it, Human Rights is born out of, and constantly evolves through, the exigencies of (continuing) coloniality; the theory-practice of Human Rights operates as an onto-epistemological framework that rationalises, norm-alises and enforces a reified human-beingness that is subject to, and bordered by, the institutional structures of global accumulation, (re)distribution and dispossession. Human Rights therefore is co-constitutive (along with the territorial concept of 'sovereignty – see below) of the contemporary institutional structure and legal operation of the state-territorial global system. In this regard the evolutionary nature of Human Rights, its capacity for reinvention through time, its 'intellectual promiscuity', its

‘fragmentation’, are all central to its function as an ever-adaptive and reflexive technology of (b)ordering.

1) *The Invention of ‘Discovery’, the naming of (In)Humanity, and the License of ‘Sovereignty’.*

We are concerned here with a story of populations and territories. As a start, it is useful to travel farther back than the great ‘European’ revolutions of the 18<sup>th</sup> century to revisit the much discussed debate on the ‘Human’ between Bartholome de Las Casas and Juan Gines de Sepulveda (and we add to this the later ruminations of Francisco de Vitoria and Francisco Suarez), so central to most critical, post-colonial, anti-imperial, tellings of the violent story of human wrongs.<sup>34</sup> This tale, as is oft-told, narrates the colonial pasts of International Law, to unveil the ‘dehumanisation’ of the encountered populations deemed Other to imperial Europe, and to demonstrate the significance of the postcolonial struggle to be Human, as it were. What is less considered in the discussions on origins and foundation is that the debate on the idea of the Human as an ontological category here takes place in conjunction with, and as a response to a prior philosophical problem: how to rationalise, and norm-alise, expansive acquisition and rule over the ‘encountered’ bodies and territories of the rich ‘New World’ now ‘discovered’.<sup>35</sup> In other words, the debate surrounding the ‘Human’, in these formative moments of colonial-modernity, is significant less because it was a discussion on the ontological nature of the imagined ‘Self’ and the encountered ‘Other’, more that it pertained to the rationale, scope and limits of appropriative and possessive *license*, and with it, of subjugation, control, containment, even destruction, of inconvenient, impeding, others.<sup>36</sup>

What we find from this broader reading of the invention of ‘discovery’ as a philosophical moment is that before the rationalisation of the ‘Human’ in colonial-modern onto-epistemology is the prior assertion of the universal ‘natural right’ to appropriation. From this material context of *encounter* is the abstraction *Human* birthed as a foundational philosophical category. Philosophical deliberations on the ‘(in)humanity’ of Indian ‘humans’ cannot be understood therefore in isolation from the the appropriative desires of the ‘discoverers’ to secure the unfettered entitlements of ‘travel’ and ‘trade’ (and of course, for good justificatory measure to preach God’s word through the King’s guns and swords); seen in this light, the *universal* ‘rights to hospitality’ – in its sanitized articulation – is more accurately understood as a *particular* duty to subjugation. Not any sublime quest for some universal metaphysical truth but the very mundane reason of *right-ful* appropriation ascribes originary meaning to the invention of the ‘Human’ of ‘Humanity’ so ‘discovered’: first is the foundational assumption and assertion of license of the imperial *I*,<sup>37</sup> then is the rationalisation



of the vacuous category of the 'Human' who is thereby named and emplaced as the subject of governed-Beingness. Enrique Dussel's correction of *ego conquiro* (the conquering *I* that precedes the sovereign *I* who thinks) to the Cartesian *ego cogito* is exactly to point here; the mythological *I* that 'thinks', of Euro-imperial philosophy, is founded upon the material *I* that conquered.<sup>38</sup> A further philosophical invention completes the imperial manoeuvre: the assertion of 'universality' as a philosophical quality of Human-ity entrenches this trans-territorial Being of acquisition and possession, of Right, as the fount of the onto-epistemology of Human Beingness that founds and enforces the subsequent (b)ordering of the world as a World, named and possessed. We are indeed speaking here of the license of *soverignty* as the original act of acquisition/dispossession in the naming of (Non/In)Humanity.<sup>39</sup>

We see therefore that from the early ontological debates on the question of the 'Indios', this act of intervention upon, and for, the 'Human', lies at the very origins of the so-called 'humanist' reason which subsequently finds evolution into the vocabulary of Human Rights as a universal and global technology of differentiated-(b)ordering.<sup>40</sup> The 'native-Indio', as named by the ontological *discoveries* of philosophers, and subjugated by the violence of their 'conquering-saviours' (made to be, that is, into both philosophical and material 'non-Being-ness') is introduced into the 'World' precisely as the license of the conquering *Human-I* is asserted, affirmed, and normalized. Thus is the right of license the original 'sovereign' affirmation of differentiated being-ness that founds the philosophy of right-ed (In)Humanity, defining the (b)orders of license- appropriation, containment-subjectification, and abjection-abandonment. The subsequent future of right-ing the Human has since been all a variation, and a continuity, of this underlying reason of (b)ordering.

## 2) *The Birthing of Secular 'Man' and the (B)ordering of Territorialisised 'Citizens'.*

This coherence of the rationality of (b)ordering we see continued with the invention of 'Man' (as 'universal subject') and 'Citizen' (as 'territorialized subject') of rights-obligations; this is familiar philosophical ground for Human Rights origin-stories. But I am not concerned here to re-trace the philosophical legacies of the so-called American and French Revolutions - as the celebrated iconic Events of the Enlightenment - on the idea of Human Rights. Important for my argument rather is how this philosophical move of Eurocentric colonial-modern onto-epistemology now structures the norm-ality of *international* (b)ordering as a totalised regulatory system for the global management of bodies-in-territory. Again, we see here the central role of the magical (Hu)Man in the operation of (b)ordering differentiated being-ness.

Rather than some revolutionary universal imagination of an emancipated-human, the philosophical invention of Man-Citizen produces a reified abstraction as *political-legal subject*, importantly now no longer as a being in a borderless geography under divinity but as territorialized under ‘sovereignty’; the ‘Enlightened’ Man-Citizen of rights originates and entrenches – to borrow from Zygmunt Bauman - a ‘transfixed’ imagination, which emplaces subject-beingness within bordered state territories, as a secular revisioning of a good order for a good society.<sup>41</sup> Thus emerges as a normality into the World the onto-epistemology of Citizen as a secular political-subject constituted by *Sovereign-Rights* (in/as-territory), and of Man as a metaphysical-subject constituted by *Human-Rights* (in/as-property). Through the invention of Man-Citizen, therefore, is transfigured the ‘believer-of-the-faith’ from the old (b)order of Christendom to the new of state-nationality, from the universality of the ‘global-divine’ to the particularity of the ‘territorialised-secular’, from the good Christian of the good God into the good Citizen-subject of the good (Sovereign) State, again, we recall, not as an actual in the world but as a reification, a malleable point of departure, a ‘zero point’ of colonial-modern philosophy, as ideal, as perfect.<sup>42</sup> The abstraction serves a powerful function. As a rationality of governance-subjectification, the assignation of an abstract propertied-possessive and possessed ‘subject’ enabled the creation of a new order, built upon an assertion of rational purity and perfection, an *ideal* of a new territorialized settlement of names and emplacements of inclusion/exclusion. But ideals aside (and whatever the motives of individual philosophers might have been, noble or otherwise) more specifically was constructed the original territorialized political-legal template for a global regulation of differentiated license, containment and abandonment. And this is crucial: Man and Citizen were inventions not of an insular imagination, but of an imperial one; they express the variegated conditions of right/lessness in the emergent colonial-modern capitalist State system.<sup>43</sup>

When recounting the (European) story of the modern ‘nation-state’ - that state that is purportedly founded on the unshakeable ‘truths’ of the Rights of Man, and the ‘social contract’ - we speak in actuality of a *colonial-modern* formation within a totality of global coloniality; the exigencies of (b)ordering in this sense pertain to both 1) the differentiated subjectification internal to the colonial-modern territorialized state, and 2) the institutional architecture of a system of global differentiation. The two are co-constitutive and interdependent. It is important to stress this point to correct the conventional celebratory tellings of the revolutionary ‘European’-story as a tale in itself devoid its murderous colonial underside; contrary to the philosophical and geographical purity of most tellings of the story of ‘European’ thought, much of this ‘thinking’ took place fully

in the blood-soaked contexts of the trans-Atlantic slave-trade and the globalized routes and networks of imperial/colonial plunderers. This is not new to our understanding: as Walter Rodney long ago made clear, Europe did indeed ‘underdevelop’ Africa,<sup>44</sup> and as Walter Mignolo repeatedly reminds us, there would be no European ‘modernity’ (and its narratives of salvation) without global coloniality (and its materialities of negation, subjugation and appropriation).<sup>45</sup> When understood as a global, as opposed to an insular-European historical formation, therefore, we see more clearly that the coeval actuality of Rights declared, and subjugation enforced, corresponds to a rationalization of a global structuring of difference. The assertion of propertied-rights (of conquest, appropriation, possession) for some and the ‘obligations’ on the inscribed-Other as conquered ‘Humanity’ to be made-‘subject’, this is the utter materiality of what Charles W. Mills brilliantly exposed as the ‘racial contract’; the ‘social contract’ so proudly the philosophical birth-right of the ‘citizen’ being fully written with the blood of the racialized inflictions of the *expropriation contract*, the *slavery contract* and the *colonial contract*.<sup>46</sup> With this understanding of the ‘norming of space’ as the ‘racing of space’,<sup>47</sup> we might better describe the march of ‘progress’ that was the affirmation of the Rights of Man and the Citizen therefore as follows: the reified (Hu)Man of the Enlightenment was right-ed - as ‘citizen-subject’ - as a prize gained through the operation of the coloniality of subjectification-as-negation which ascribed as Non-Being (barbarian, savage, native, Black) the encountered ‘Other’ of Already-Being, the result of the operation of the ‘natural rights’ to name, enslave, subjugate, rape, lynch, murder, civilise, educate, develop, all in the name of universal (In)Humanity.<sup>48</sup> Bluntly, Man/Citizen as abstract, universal, right-ed, philosophical-beingness were philosophically birthed as actual embodied men, women and children were the world over subjugated if not entirely massacred.

Thus was the modern ‘nation-state’ of territorialized sovereignty-subjectivity constituted philosophically and materially. And with it, were the normalities of coloniality-modernity invented, rationalised, institutionalized to enforce the ‘colonial difference’,<sup>49</sup> the many worlds of Being violently transformed into a ‘world-system’, its ‘borders’ drawn through ‘banalised’ violence – as Vivienne Jabri called it - to (b)order and regulate differentiated (post)colonial bodies within strictly enforced territorial cages.<sup>50</sup> And we carry this ‘White Man’s’ legacy still as the ‘Black Man’s burden’.<sup>51</sup>

### 3) *The Globalisation of ‘International Human Rights Law’ and the Completion of the (Post)Colonial World System.*

It is often the territoriality of global order and governance that provokes distress amongst Human Rights thinkers/actors as the promise of universality is perceived to be undermined by the discrimination of borders. And yet, as we have seen, the foundational traditions of dominant contemporary Human Rights theology were precisely rooted in the territorial (b)ordering of differentiated 'subjects', their rationalized ascriptions of beingness the basis upon which gendered and racialized brutalities were norm-alised and enforced, as right. But this is not simply a telling of tales past, of the troubled (hi)story of Human Rights in its journey to post-colonial redemption. Quite the opposite, the materialization of the 'post-colonial' right to 'self-determination' - as the obligation to enforce a (b)ordered territorialised State - has proved fundamental to the norm-ing of global space as (b)ordered differentiation. The tragedy is that the 'post-colonial' world state system - in those many celebratory midnight hours heralded as 'liberation' from colonial, racist inhumanity - indeed marked the coming into full fruition of the process of colonial civil-isation.<sup>52</sup>

The manufacture and coming into 'independence' of the territorialised 'post/neo-colonial state', with 'privatised sovereignty' - to become, as Achille Mbembe has termed the condition, a 'postcolony' - reinforces and completes a global system designed to entrench the structural inequalities of imperial design.<sup>53</sup> The philosophical invention of the 'Human' and of the idea of 'universality', once explicitly founded on racialized differentiation, now are rejuvenated, their bloody pasts cleansed of their horrors and the material outcomes of impoverishment and enrichment thereby engendered now normalized as conditions of the 'World' rather than active processes of the World-made-such. In this, the 'constitution' of the post-colony - in the sense of its made-to be-ness - and of the 'post-colonial' demarcation of bodies-in-territory, serve to re-inscribe anew a fully globalized, institutionally entrenched and enforced, differentiated regulation of license, containment and abandonment.

Understood as a totality the conceptual register of Human/Citizen's Rights is co-constitutive of this organization of the territorialized (b)ordering of differentiated subject-beingness. As we will see more fully later in the discussion, the regime of emplaced and bordered citizenship-with-rights serve crucially as a global neoliberal technology of dividing and ruling populations.<sup>54</sup> In doing this, the constitutional function of the 'international' system of territorialised (b)ordering - as institutionalized by the UN Charter system and its attached Human Rights governance-frameworks - is to enforce the basic architecture of a totalising regime for the differentiated subjectification of the global population, regulated in and through the discursive and material technologies of state-territoriality.<sup>55</sup> And so does contemporary 'International Human Rights Law'

operate to settle the post-colonial *present*: it both enforces the prevailing order of rights as constructed, rationalized and regulated in time and place, as well as prescribes the presence/absence of those with(out) membership of belonging through the negotiation and redistribution of names and places as Being-subject. Though parochial and colonial in origins, the reason of Rights find useful translation therefore into the many particularised and contingent adaptation of its operation in the different times and places of Human-subjectification.<sup>56</sup> The ‘international’ politics of Human Rights ‘law’ is, in this respect, a politics of competing claims to define the borders of license, and the jurisdiction of containment and bans, outcomes of which, in terms of enforced rights and obligations in real-time and place, are determined by the jostling for power by competing state-private imperialist forces. ‘Superciliousness’ is precisely the point of this politics;<sup>57</sup> the struggle for cross-cultural meanings and interpretations - for its Asian, African, Chinese, Islamic value-implications, for reservations and qualifications etc - can all be understood in this light as a contestation between competing imperial-capitals, for ‘rights’ of license and the ‘obligations’ of protective containment and rationalizations of abandonment. Thus we see that the underlying reason of (b)ordering differentiation is not diluted by the various efforts to ‘de-Europeanise’, or to ‘decolonise’ Human Rights, to bring about civilisational plurality within its substantive meanings. Quite the opposite, the addition and mixing of the spices and herbs of exotic ‘post-colonial’ realms into the melting-pot of Human Rights serves the overarching cause well; the ascription of a pluriversal universality in this regard serves as a philosophical technique of global naturalisation and norm-alisation regardless of the ‘resistance’ motivations of many a post-colonial philosopher of Human Rights. We are all Human Rights-subjects now, subject to the naming and emplacing of subject-beingness. As such we may be *contained* with rights and obligations if we remain docile, obedient and worthy, but *abandoned* (even banned) to abject rightlessness if we are deemed not so.

Human Rights thus defines the now, the who, and the how-to-be, of Human-ity, as constantly named, rationalized and (b)ordered. Agamben was correct therefore to see that the Rights of Man birthed the insidious and sophisticated technology of the biopolitical (colonial-)modern State (even if he was unable to see the colonial and territorial undersides of it), whereby are ‘citizenship’-‘ban’ precariously the existential conditions of political subject-beingness, in inclusion or exclusion.<sup>58</sup> Contra Agamben, however, the ‘decision’, that is the inscription of names and places as borders of the ‘political’, is not an undifferentiated act of ‘sovereignty’. I argue instead that the invention of ‘sovereignty’ – and I stress sovereignty as an invention, a philosophical rationalisation with no metaphysical essence, content, or materiality awaiting discovery or revelation - is precisely the

assertion and enforcement of the (b)ordering differentiated subject-beingness;<sup>59</sup> the sovereign assertion does not create/decide ‘differentiation’ as the ‘exception’, rather the invention of ‘sovereignty’ is the very norm-alisation of differentiated (b)ordering. In this connection, the reason of Human Rights co-responds to that of secular sovereignty; sovereignty – as a rationalisation of territoriality, and Human/Citizen’s Rights as a rationalisation of subjection combine to construct the norm-ality of global (b)ordering; together these *inventions* of colonial-modernity norm-alise the global institutionalization of regimes of appropriation, control and subjugation. This, I repeat, is not an aberration to an otherwise progressive postcolonial global order, it is not a betrayal of a possible post-colonial imagination of Human Rights defeated or betrayed, but is the very foundational reason for that order itself. There is no contradiction here. Indeed, post-colonial Human Rights are universally the concern of all, just as embodied human persons are, equally, wholly (potentially) disposable, surplus, irrelevant, subject to violence (always normalised) and abandonment (always rationalised).<sup>60</sup> Her life, in this sense, is precisely ‘precarious’, not a result of cruel betrayal or appropriation, but in its very made-to-be-ness, as the very reason of being-subject.

### **The Coherence of Perverse Facts.**

My argument in this essay is that, contrary to the common assumption that Human Rights pertains to the Humanity of the (venerable) vulnerable Human-subject, it is to construct and regulate the differentiated (b)orders of subject-beingness – of license, containment and abandonment - that the technology of Human Rights operates as a discursive instrument of governmentality, whatever the meta-political aspirations of critical philosophers of rights might be. This coherence of reason, I argue, is clear to witness in the perverse facts of inequalities, violence and neglect that beset the condition of (b)ordered human-beingness.

#### *1) The (B)ordering of Abandonment and Containment-Belonging.*

The conventional understanding might view Human Rights as expressing the underlying (aspirational) assertion of the (universal) ‘right’ of the Human-subject to belong, with dignity, at home in the world. But clearly this is not the actuality of Human Rights. Considerable disciplinary and regulatory anxiety thus is expressed regarding the fate of the abject abandoned-subject of rightlessness, for example, with regards the impact of ‘borders’ and ‘belonging’ on the Human Rights futures of ‘displaced’ persons. The question that dominates these deliberations can be simplified in the following terms: what are the effects of borders that separate Humanity into the

territorialised regimes of inclusion and belonging on the realisation of universal Human Rights, or more basically, on the Arendtian notion of the very ‘right to have rights’ itself? In apparent tension here are the separatist and exclusionary ‘political’ force of borders that operate to *keep out*, on the one hand, and the inclusionary ‘cosmopolitan’ force of Human Rights, on the other. When understood through the perspective of (b)ordering however this apparent tension appears less a matter of opposing tendencies and more one of structural and systemic regulation; the discursive technology of Human Rights enable precisely this negotiation of (b)ordered inclusion and exclusion.

Take the current ‘migrant/refugee crisis’ confronting the citadel that is ‘Europe’, a crumbling idea as it is even as it is all the more vigorously asserted and defended. As we witness the many bodies that, paying no heed to assertions of territorial inviolability, stream through the borders of Europe, we are reminded just how Human Rights is embedded to a global regime of territorialisation, and of how such territoriality renders meaningless the assertion of universal rights in the face of de-territorialisation and displacement.<sup>61</sup> There is no contradiction here. To be members of a shared Humanity with universal Human Rights in the world is not, we understand (for the ‘wretches of the earth’), to have the ‘right’ to share the same places of the world; this is all the more poignant given that the very original assertion of colonial license, as we have seen, was premised precisely on this ‘right’ to travel and the ‘duty’ to administer hospitality!

But this act of exclusion, this abandonment through bans, is not however an act devoid the meticulous inscription of subject-beingness upon these abject bodies. Quite the opposite, banned bodies in movement remain subject to a totality of naming, to be inscribed with meaning, ascribed a condition of subject-beingness, all part of the (b)ordered totality of a regulated and enforced ‘sphere of justice’,<sup>62</sup> either performatively embraced as worthy-‘refugee’ to be assigned a place within the register of (Human)Rights, or denounced as unworthy-migrant, to be repulsed from entry, perversely ‘included’ into the register of names as abject, as banned-abandoned-rightless subject. What is critical in this understanding is that the fate of the ‘Human’ – as ‘refugee’ or otherwise – is not determined by an abstract, ethical judgement on the Humanity of the suffering Humans concerned; as Mark Franke rightly observed, “there is extraordinarily little discursive capacity within the contemporary theoretical debates on human rights to ever seriously entertain the rights of displaced persons as human rights.”<sup>63</sup> Rather the actual fate of Human-beingness in its embodied particularity, as ‘subject’ (in whatever form, included or excluded), is always a contingency, an instrumental and consequential outcome of a governmental balancing of the

desires, pressures and exigencies of (b)ordering such that the stability of a territorialized order of bodies contained within differentiated territorial boundaries may be maintained. Put simply, the fact of Human Rights with regard the fate of the vulnerable migrant-subject is concerned primarily with the stable regulation of contained bodies in territory, not the suffering of human persons.

So we see that the (b)ordering of exclusion and abandonment is simultaneously an operation of (b)ordering 'belonging'; with every such 'decision' which names the 'foreigner', the 'alien', we see the biopolitical (b)orders of the constituted, contained, mythical 'We' (re-)defined and reaffirmed. Exclusion-ban simultaneously gives meaning to inclusion-containment. The making-other, as differentiated from the reified subject of right-full belonging thereby performs the function of making-self of 'national' rights/obligations.<sup>64</sup> In this way, being-Human-subject – in belonging and exclusions – is onto-epistemologically entwined with the constant (re-) 'constitution' of the territorialised State and, simultaneously, of the colonial-modern State-system. Thus is enforced the perfected coloniality of a globalised regime of differentiated (b)ordering, of citizenship as a technology of 'divide and rule' to regulate the right-full/less places of differentially named right-full/less subjects. In all of this, the fate of the embodied human person is incidental to the broader reason of (b)ordering Humanity in differentiated being-ness.

## 2) *The (B)ordering of License-Privilege.*

We remind ourselves that whilst the 'migrant/refugee' crisis brings forth in public performance heated and urgent debates about naming those properly-belonging and those of fraudulent claim to universal Human Rights, at the same time are *exemptional* subjects (and the chains of capital, commodities and 'services' that attach to them) free to roam undisturbed across bounded territories, asserting and enjoying the old transterritorial 'natural rights' of license and 'hospitality'. It is not that we are unaware of such operations and movements of the 'global citizens' of the world, of the 'transnational capitalist class' as Leslie Sklair named them some time ago.<sup>65</sup> The privileged hyper-mobility of these subjects of license as they pass through 'fast-track' facilities of border-crossings has been plentifully documented; indeed for such privileged global travelers, borders clearly serve as facilitators of *letting in* and *letting out*.<sup>66</sup> What Human Rights critics of such global inequalities often ignore however is that these analyses of differentiated and transterritorial mobilities reveal that structured differentiation is precisely the reason of regulation, not an aberration of some previous universal ideal of equality now betrayed. Even as the public discourse on borders repeatedly beat out affirmations and reconstructions of some reified 'We' of



mythologised ‘political belonging’, the material actualities of differentiated (b)orderings of subject-beingness is everywhere otherwise enforced, and realised.<sup>67</sup> On this point, much critical political-legal thinking has obsessed with the reification of invented inscriptions of names – regarding, for example, on the meaning of the ‘subject’ of the ‘political’ – to the detriment of an interrogation of the facticity of (b)ordering,<sup>68</sup> retaining the bounded-state still as its point of reference. Largely ignored in such sophisticated rearticulations of ruptural/excessive-subjectivity in contemplating the terrain of the ‘political’ have been the more mundane and empirical perspectives that see the ‘disaggregation’ and ‘fragmentation’ of the state, and its configuration through the actual geographies of what Saskia Sassen has termed ‘global assemblages’.<sup>69</sup> ‘Critical’ meditations on the ‘subject’, on the ‘political’, seldom it seems burden themselves with the actualities of being subject-in-the-world, of being subject-to-the-world. The question of relevance, I suggest, is not who is the ‘subject’ of the ‘political’, as a philosophical abstraction, but rather who in actuality are the subjects of rights/lessness within (b)ordered states as they operate variously as particular (fractured and fractious) locales of the global.

The actualities of being-subject, on the ground as it were, is that within the many locations of the global-in-(State)territory are the ‘natural-imperial’ rights of transterritorial license – to ‘trade and travel’ – the duty of territorial-national governmental technologies of States to negotiate, promote and enforce, no matter the ‘constitutional’ claims of inconvenient, precarious ‘citizens’. State-enforcement, in conjunction with the manifold private ‘global law’ regimes of surveillance and adjudication, is critical here; whilst appearing to float amorphously over state-territorial (b)ordered jurisdictions, ‘global assemblages’, we note, remain entwined by the grounded state-territorial technologies of regulation and violence, their ‘fluid supraterritoriality’ hyper-dependent on the territorialised regimes and technologies of surveillance and policing for their ‘freedoms’.<sup>70</sup> In the enforcement of such (b)ordered operation of ‘supraterritorial’ rights we find of little significance abstracted claims of ‘national’ political belonging. Quite the opposite, often what such enforcement entails is the protection of ‘transnational-others’ from ‘national-selves’; the increasing militarisation of controlling dissent against these assemblages of global license evidence in brutal starkness the material and experiential (b)ordering of actual friends and enemies, borders of the ‘political’ notwithstanding.<sup>71</sup> Arundhati Roy tells it plainly:

‘All over the world, weak, corrupt local governments have helped Wall Street brokers, agribusiness corporations, and Chinese billionaires to amass huge tracts of land. (Of course this entails commandeering water too.) In India the land of millions of people is being

acquired and handed over to private corporations for “public interest” – for Special Economic Zones (SEZs), infra-structure projects, dams, highways, car manufacture, chemical hubs, ad Formula One racing. (The sanctity of private property never applies to the poor.)<sup>72</sup>

Such is the *fact* of Human Rights as a technology of enforcing differentiated subject-beingness. Whilst the cacophony of the many continued mythologized assertions of a bounded-nationalist ‘We’ reverberate across politics against abject ‘immigrants’, the hyper-mobile, transterritorial ‘foreign investor’ of license gains privileges and favours (Human Rights) often with little public scrutiny, their security of being and livelihoods enforced through regimes of private law in ways that far exceed those of national citizen-subjects who remain tethered by the rights and duties of constitutional-containment/ban;<sup>73</sup> transnational capital it would appear is the true global citizen with universal ‘Human’ Rights! This, I venture, will be even so despite the electoral successes of the ‘take back control’ posturings of contemporary populist political figures of the so-called ‘(alt-)Right’.

So, this *is* the work of Human Rights to do. As a result precisely of its malleability and responsiveness, fully in its vacuousness, Human Rights enables precisely the enforcement of such differentiation of *actual* friends and enemies (rather than those fetishized by post-Enlightenment’ political-legal philosophy); for transnational capital to be accorded (Human) rights over national citizenry, we must understand, is the workings of universal Human Rights rightfully effected; the livelihoods of the most impoverished citizens sacrificed for ‘public’ purposes, equally so the rightful effecting of Human Rights governance: all is possible in the name of Human Rights, objections of activists or critical philosophers notwithstanding. Here is where the true ‘cunning’ of the State manifests,<sup>74</sup> to balance and rationalize – and this no doubt is a political burden - the distribution of competing rights/lessness, transnational, national and local. Understood through the mythology of the universal Humanity of the Human subject, such seemingly perverse privileging of the elite desires of transnational capital over the vulnerable fates of human subjects, might appear as a betrayal of the reason of Human Rights. Understood through the reason of (b)ordering, however, we see that differentiation *is* the coherent function of the very assertion of the universality of Human Rights.

### 3) *The (B)ordering of Fear-Vulnerability, Violence.*

Much Human Rights anxiety, we know, follows the apparent totalitarianism of the contemporary discourse and violent practices of ‘global security’ and the now all pervasive ‘war on terror’. The rationalities of a global ‘government of unease’, as Didier Bigo calls it,<sup>75</sup> are seen as compromising long-standing Human Rights values of privacy, fair trial, freedom of movement, freedom of expression, freedom from torture etc. Here, the assumed novelty, the new, that so worries the critical Human Rights thinker-practitioner, is that the subject and geography of securitisation exceeds the limits of constitutional-territorial jurisdictions and their rights-protections to operate instead as a global domain of surveillance, enforcement and biopolitical governmentality.<sup>76</sup> Our reading enables a different understanding of the operation of Human Rights in the government of unease; the management of *risk* precisely describes the rationality of (b)ordering that this entails. Critically, the reified subject of Rights serves as the discursive referent, even alibi, for this enforcement of biopolitical regulation. With the discursive and material inscriptions of threat upon ‘dangerous’ or ‘suspect’-subjects of exclusion-ban, are the mythical vulnerable subject of Rights, as a zero-point of governmentality, assured ‘protection’ in inclusion, from fear (through violence, if necessary).<sup>77</sup>

We see this recourse to the vulnerable Human as alibi for the global (b)ordering of violence clearly in the discourse on ‘humanitarian intervention’, relabeled as the ‘responsibility to protect’, with its emphasis on ‘Human Security’.<sup>78</sup> The concern for ‘vulnerable’ populations is now a centre-piece of global security action, their rescue from the precarious polities of ‘fragile/failing’ states, incumbent upon the civilized to oversee;<sup>79</sup> sovereignty now less an impediment, its sharing, as responsibility, a reconceptualisation towards humanisation.<sup>80</sup> For well-meaning protagonists, the Human Rights assumption here is that with such prioritisation of ‘human security’ might, hopefully, rightfully, the vulnerable Human subject be the focus of global solidarity. This more so with the ‘war on terror’ rationalisation – unsupported by empirical evidence it would appear – that such ‘fragile’ states provide fertile grounds for rampant transnational evil.<sup>81</sup> The other side of the story, one less enthralled by the ‘late-modern’ cosmopolitan embrace of the Human Rights of vulnerable-Humanity, however, are the manifold analyses which see in these assertions of Human Rights the familiar expressions of imperial desire, and control.<sup>82</sup> Seen through the lens that I present here, we again see coherence rather than contradiction: rationalisations of global ‘responsibility’ - to ‘protect the rights of others’ – enable the enforcement of the differentiated (b)ordering of ‘desirable’ and ‘dangerous’ subjects through the global regulation of territorial containment.<sup>83</sup>

Caroline Holmqvist is both correct and mistaken:

‘Political imagination, as we have seen is conditioned by spaciality. The shifting of special imagination from linear statism to globality and supraterritoriality has involved a fundamental upheaval of political relationships and the way in which political agency is imagined. Only in light of this can we understand the evolution of such counter-intuitive ideas as that of military intervention (war) *(re)establishing* the social contract in another state, *on behalf of* another people – an idea, of course, that has very little in common with classical understandings of a social contract between state and citizen.’<sup>84</sup>

Whilst it is true that that we are witnessing an ever greater *assertion* of globality in defining the ‘space’ of political imagination’ – at least with respect to reasons of ‘security’ even if not distributive justice<sup>85</sup> – there is nothing ‘counter-intuitive’ about this fact of globality; the neoliberal operation of global policing through the operationalization of Human Rights makes complete sense. The error here, as is so often the case, is an assumption of the truth of the ‘social (racial) contract’ as the basis of political belonging within a bounded (Enlightened-)state. When the actuality of the state is differently understood as a contingent space of contested global (b)ordering then the coherent reason of imposing ‘on behalf of another people’ in a distant territory the policing strictures, and structures, of a reformulated, reconstituted ‘social/racial contract’ of Human/Citizen’s rights, becomes plain to see. ‘Security’ and ‘development’ indeed are ideologies and technologies of ‘pacification’.<sup>86</sup>

The function of the state as a constituted spatial unit within a global framework of the territorialized regulation of subject-bodies, is first and foremost to *contain* regulated subjects within its enclosed space; through such management of contained bodies may the right-full license of transterritoriality may be facilitated. The regulation and management of bodies *kept-in* and of bodies *let-out*, therefore, is the fundamental obligation/responsibility of post-colonial ‘sovereignty’ as a global administrative and regulatory technology. Effective/good states (as opposed to ‘weak/failing/fragile’ ones) are ones that are able to enforce and maintain the (property-)rights-regime of license/containment/bans of subject-beings within their territory - these then would be the ‘good neighbourhoods’ of Mary Kaldor’s vision of human security;<sup>87</sup> good/desirable subjects are, in turn, those that remain, with their ascribed names within their ascribed places in these ‘good neighbourhoods’ (territories/states) as compliant, self-disciplining, entrepreneurial agents of neoliberal capitalism.

In this respect, the greatest failure of the (postcolonial) 'sovereign' state is to fail in this function of the regulation and containment of bodies in rights and rightlessness; the spill-over of emplaced and named subjected-bodies (as citizen) out of their regulatory-territorial cages as dangerous subjects (as 'migrant', 'refugee', 'terrorist' etc) signals the primary indicator of the 'failed state'. Against such failure must action, *for* 'security' and Human Rights, be undertaken at the level of the 'human terrain'.<sup>88</sup> And as Mark Duffield and Nicholas Waddell explain, it is precisely to regulate the human terrain that 'human security' serves effectively as a 'principle of formation' and a 'relation of governance'.<sup>89</sup> Rather than an aberration of an international system of non-intervention and co-existence, we now witness the enforcement, as a totality, of a globalising morality of normality and deviance, of 'development', 'health' and 'disease', in order that desirable liberal subjects (of rights) may be secured from the dangerous subjects of some pathological violent intent. Security in this imaginary thus equates with the administration of what Michael Dillon and Julian Reid term 'global triages' against the 'emergency' of dangerous emergence; '[g]lobal triage specifies who gets what treatment, where, when and how.'<sup>90</sup> This as a rationality of a global security imagination, transcending the perceived limitations of territorial jurisdictional borders, a matter now for global surveillance and policing; the 'border' of differentiated subject-beingness, we now know, is defined less by nationalised territorial registers, more by a general globalized, and subnationalised, corporeal biopolitics of desirable and undesirable subjects of Rights/lessness.<sup>91</sup> By such biopolitical borders are the actualities of 'friends' and 'enemies', rights and rightlessness, marked within the good and bad neighbourhoods of 'sovereign' orders.<sup>92</sup>

In all this we see that the semantics of the 'protection', and 'development', of the vulnerable Human-subject continue to rationalise to a global 'security' imagination that is still concerns the (b)ordering of the rights to license against the threats of contained/banned subjects. It is so now as it always was, as Anthony Pagden demonstrates: the origins of 'humanitarian imperialism' are found in the following fundamental 'natural rights': '1) the right to preemptive strike, 2) the right to the use of "vacant" lands, and 3) the right to punish those who transgress the law of nature.'<sup>93</sup> Intervention for human security, for State-building and 'development', for the protection of the 'vulnerable' Human-subject, for the policing and surveillance of desirable and dangerous subjects, serve now as the contemporary rationality and vocabulary for the old discipline of the colonality of 'civilisation'.<sup>94</sup>

To conclude the discussion in this section, this I stress: what we learn from these examples of the perverse coherence of the ‘facts’ of rights(lessness) is that Human Rights must be understood within a broader reason of differentiated (b)ordering. Contrary to conventional readings, the construction of differentiated subject-beingness is not an exception, the result of Human Rights perverted, not a paradox of Human Rights effected, not a perplexity of Human Rights imagined. Exactly the opposite, Human Rights functions coherently, in its indeterminacy and its contingencies, to (re)make us differently-subject in our metaphysical equality; it provides the ‘universal’ rationalisation of a territorially-managed and enforced ‘constitutionalisation of inequality’, as Stephen Gill so aptly put it.<sup>95</sup> From the coherent reason of territorial inclusion/exclusion and the differentiated mobility of license and abjection, to the material and discursive (b)ordering of biopolitical ‘human security’, Human Rights we see enable the distribution of names and emplacements of license, containment and ban, to regulate the differentiated subject-beingness of the ‘transnational capitalist classes’, the ‘national citizen-subjects’ and the ‘denationalised abject-subjects’ of the world.

### **Conclusions and Openings.**

To argue that Human Right must be understood as co-constitutive of a reason of (b)ordering is not to suggest that many an emergence and recognition of ‘rights’ as settlements of government in here-and-now legal articulations have no foundations in experiences of suffering and struggle.<sup>96</sup> In this respect, the ‘Human’ of Human Rights might well serve as a biopolitical field of contestation for recognition and (re)distribution of names and emplacements – as citizen/legal alien/illegal alien etc.<sup>97</sup> Room for negotiation, for ‘responsiveness’, might thereby indeed be available within the territorialised regimes of biopolitical governmentality, spaces for deliberative negotiation and settlement might therefore be opened up by resort to the presumed ‘democratic iterations’ of an engaged and informed public, as Seyla Benhabib would like to believe.<sup>98</sup> The point that I wish to stress is that responsiveness and adaptability to manage and re-settle the distribution of names and emplacements is precisely the work of Human Rights as a *technology of containment* to do; the contingent inscriptions of subject-beingness operate within regimes of naming that define the parameters and scope for renegotiation, for re-counting the present of those present and those absented. This is to say that prior to the articulation of (any) ‘rights’ as expressed in actual ‘political-time’ and registered in ‘political-history’, even in their disruptive, ‘dissensual’, and pluriversalistic emergence, exist already the containing and constraining regulatory norm-ality from whence the right is/can be thought and asserted; rights are thus already particularly constructed artefacts of a

negotiated settlement of ‘containment’, and as such, are constrained by the regimes of reasons (of containment) so (b)ordered. This being so, the specific ‘names’ and ‘places’ of subject-beingness may indeed be granted altered recognition through the politics *for* Human Rights – the once abandoned (or banned) may indeed become ‘recognised’ and ‘included’ – but they remain nevertheless precariously-subject, and subjugated, to the underlying rationale of appropriative license through the inevitable application of the politics *of* Human Rights.<sup>99</sup> This is less a scene of rupture, more of pacification. Let us take an example, one that is often spoken of in terms of a ruptural Human Rights becoming: that of the ‘undocumented worker’.

The error is to confuse the ‘undocumented’ as being *non-subject*, inexistent. Following this ontological presumption of (non-)beingness, the re-inscription of subject-beingness from one category of being-subject (undocumented) to another (worker) is then mistaken as a rupture of *categories* of subject-beingness themselves; Anne McNevin’s appeal to have recognised ‘transnational labour citizenship’ as a category of ‘political belonging’ is an example of this error.<sup>100</sup> I understand it differently. The reorganization/redistribution of contained subject-beingness, rather than the rupture of categories of subjugation – from non-being/inexistence to becoming/being-subject – is effected by this maneuver of reinscription; the ‘worker/transnational labour’ (subject to ‘regularisation’ and ‘documentation’) remains a normality into which the particular subject-in-exclusion (*undocumented*) may be re-inscribed anew as differently-subject, contained again within the totality of differentiated (b)ordered being-ness. An examination of the simple bureaucracy of ‘recognition’ reveals this operation of re-subjectification: first, the unpredictable, uncontrolled, uncontained articulation and manifestation of struggle is domesticated through the ascription of ‘undocumented-worker’ as the transitional category of subject-beingness; then is the renegotiated status of subject-beingness into the contained (though now expanded) category ‘worker’ approved and re-cognised (or not) through the processes of the submissions of documentary applications and registrations, in itself a ritualistic re-enactment of a ‘sovereign’-decision of inscription and emplacement. Far from rupture, this points to a resettlement, a reaffirmation, of containment.

Whatever the ‘authorial’ background therefore, and accepting that the ghosts of many an insurgent community of struggle haunt contemporary registers of Rights, my argument is that the inscription of Rights upon a subjectified Human – that is to say when human struggles against dispossession and subjugation become translated into the semantics and grammar of rights - enables a regulatory procedure of (b)ordering and governmentality; such ‘recognition’ of ‘rights’ so articulated pertain

precisely to the space of the ‘political’ as a (b)ordered domain that defines the shifting boundaries, terms and conditions of belonging. As the ‘recognition’ of rights enables a name and place of belonging, so does it domesticate and contain such subject-beingness.<sup>101</sup>

Therefore, we see that for all the attempts to recover an insurgent meaning and reason for Human Rights, a politics *for* Human Rights is entirely consistent with, and encapsulated within, a reason of governmentality when viewed through the lens of license and containment/ abandonment. More than this, the politics *for* Human Rights is further open to substantive ambiguity. As we so often see, such radical assertions of right could equally be for the benefit of dominant power configurations as might they be for subaltern insurrections:<sup>102</sup> the force with which radical, Trade-Related, Market-Friendly Human Rights transformations are operationalised for the benefit of the transnational capital is evidence of this, as Baxi’s own analysis concedes.<sup>103</sup> This is no accident.

What appears as the paradoxes of territoriality, governmentality and parochiality are the workings of Rights in the world, they are the actual substantive content of Rights as the (b)orders of license, containment and ban are constantly administered and re-negotiated toward a resettlement. No doubt there will be many occasions when the indeterminacy of Human Rights may well come to assist within the political frames of the redistribution of names, places, and consequently, resources. In this, the progressive Human Rights thinker/practitioner will win some battles, and lose some others. This is not my dispute. All I suggest is that we see this domain of Human Rights for what it is, and for that, to understand that such a domain of government will remain defined by the calculations of differentiated (b)ordering. Simply, the translation of the insurgent, mobilisational politics *for* Human Rights into the techno-bureaucratic and juridical politics *of* Human Rights – a necessary incorporation if the intention is for *inclusion/recognition-as-subject* – proves to be the domestication of dissent, the disciplining of imagination, the settlement of (im)possibilities, within always a differentiated reality of unequal subject-beingness. This is what Human Rights do. Without perplexity, we observe a wholly coherent and rationalized operation of differentiated (b)ordering.

But to understand the reason and operation of Human Rights thus as a technology of (b)ordering is not to limit the imagination of human futures, is not to negate the spirit of human hope. A different thinking, less preoccupied with machinations of the politics of/for Human Rights and more grounded on the actualities and vocabularies of human struggles, may be pursued. My intention here is to suggest a return of the focus of philosophies of refusal and resistance to the



necessary struggle of overturning the categories of (b)ordering that configure global coloniality. I conclude by briefly outlining such an *anti-colonial* philosophical orientation.

Two truths prevail: first, despite the valiant efforts of (pluriversal) Human Rights imaginations, the infinite problems of human suffering the result of inflicted cruelty remain prevalent and unresolved; secondly, regardless of the proliferation of (disappointed) Human Rights discourse, communities of struggle persist in their incessant refusal to abide by the extant (b)orderings of the World. Human Rights, in other words, neither saves human being-ness, nor does it exhaust other possible imaginations of resistance and refusal. From these two truths of violence and struggle might a different direction for philosophy be discerned.

We have seen that the essential operation of Human Rights is to regulate and enforce the coloniality of categories of differentiated subject-beingness. To be subject, therefore, is to be subject to precisely these categories of differentiation. Whilst the semantics of Rights might, through ‘inclusion’, provide instances of existential reprieve from here and now desires of violence and appropriation, we see that the coloniality of power-being remains intact to this redistribution of containment-abandonment. This, as I have argued, perpetuates the politics of norm-ality and normalization. Against this I suggest a shift from the semantics of rights to a semantics of struggle, which recovers, as an anti-colonial affirmation, a philosophy of *desubjectification*.

By an anti-colonial philosophical orientation I mean to take as a point of departure not the possibility of *becoming-subject* into the categories of Human-beingness, but *de-subjectification* as a refusal of the coloniality of categories.<sup>104</sup> Bearing in mind that the semantics of rights is a framing of being within the ‘political-legal’ (b)orders of subject-beingness, the semantics of struggle, in this regard, is a semantics precisely of refusal, even ‘illegality’, which de-name and de-normalise the colonial-modern categories of license/containment/bans as inscribed through the enforcements of Human Rights/lessness. If colonial philosophies begin with the given-ness of the names and categories of (Non)Being as ‘discovered’, and thereby, of the onto-epistemologies of becoming-being into the World as given, anti-colonial philosophies begin with the assertion of a being-otherwise, an otherwise to and regardless of – in its full sense of being without regard to – the given inscriptions of names that have become normalized as (b)ordered artefacts of coloniality.

Such an orientation does not point to a philosophy of inclusion, it does not aspire for a struggle for a ‘name’ within the registers of ‘government’ in the ‘political’ space and its various places; the

ascriptions of such names rather is beside the point.<sup>105</sup> Contrary to a politics *for* Human Rights - for the 'recognition' of beingness as 'subject' - an anti-colonial philosophy, grounded upon the semantics of struggle as an articulation of desubjectification, is derived from the conscious insurgency of grounded and emplaced refusals of subjection and affirmations of being otherwise than enforced. To take seriously the labours of 'epistemic disobedience' – as Walter Dignolo calls for<sup>106</sup> - therefore entails the burden to think from the other-side of the colonial-divide against the domestication of subjectification (ie of the making-subject-being within colonial categories of human-beingness) to reclaim, as an anti-colonial assertion, names of *being-non-subject* against colonial-naming.

This undoubtedly cannot be a philosophy of the abstract, thought in the abstract, rather it is a lived philosophy of refusal, or to borrow from the insurgent thought-practice of the South African *Abahlali baseMjondolo* (*AbM*) shack-dwellers movement, it is a philosophy of a 'living politics'.<sup>107</sup>

What is critical here is to not make the categorical error that to be non-subject is to be *non-being*, to remember that before and beyond the philosophical categories of human-beingness that we take as given (containing in their very DNA the coloniality of power/being), are 'other' philosophoscapes of being that already are, persistent in their co-eval presence with colonial subjectification; these are affirmation of 'We are' as exemplified by so many articulations of insurgent refusals that have the audacity to proclaim, 'we don't ask for anyone's permission'.<sup>108</sup> And this is precisely to point: the refusal of the authority to 'permit'! We remember after all that the names of the World as we purportedly know it, that we are instructed to know it as/by, are only normalized through the self-affirmed 'sovereign' author-ity of (post)colonial regimes of government as rationalized by philosophers of global coloniality. This was the original colonial conceit, to presume to name and emplace the World. And it remains thus merely invention; for all the normalized, banalised violence of this World, notwithstanding its hugely destructive militaristic might, these (b)orders of enforced differentiated beingness remain entirely precarious upon the force of its self-assertion and philosophical normalization. From this self-asserted authority, invented and rationalized by philosophies of (post)colonial 'Right', are 'permissions' of (differentiated) beingness granted through inscriptions and ascriptions of names and places of being. Thus the significance of the anti-colonial refusal: we don't need anyone's permission.

A semantics of struggle therefore retains the anti-colonial encounter as a situation of incommensurability, its resolution coming not from inclusion into the (post)colonial registers of revised subject-names - of having *recognised* a right/obligation-to-be-in-the-World - but from their

dissolution. Perhaps it is precisely this refusal to be made-subject to the (b)orders of inflicted license, containment/abandonment, and the destruction of the colonality of categories, that portends the possibility of decolonisation wherein human futures of diverse beingness remain, as such, both already present and unfortold, neither enabled nor foreclosed by the imaginations or the semantics of Human Rights. Such an understanding of anti-colonial philosophies of struggle unfortunately does not promise the (false) comforts (and suffer from the dismay of perceived failures) of Human Rights-declaratory assertions of universal humanity moving ever towards some redeemed future to come. But for that it perhaps more accurately reflects the necessary unfinished labour of anti-colonial philosophies to to de-name the World, and to re-name/make worlds otherwise. What is to follow remains, as always, unknowable.

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\* School of Law, University of Warwick. UK. I'd like to thank Issa Shivji, Upendra Baxi, Corinne Kumar, Abdul Paliwala, Sam Adelman, Dwijen Rangnekar and Raza Saeed for the many conversations shared over the years. They have been inspiring friends and teachers. I would also like to thank the anonymous reviewer for his/her helpful suggestions towards the clarification of some of the arguments presented here.

<sup>1</sup> Whilst many an introduction to the subject of Human Rights begin with such epochal ascriptions, it is worth heeding the caution of Upendra Baxi that this is also the age of 'radical evil'; see Upendra Baxi, *The Future of Human Rights*, 2nd ed. (Oxford University Press India, 2012) 27.

<sup>2</sup> Upendra Baxi, *Human Rights in a Posthuman World: Critical Essays* (Oxford University Press, 2007) 8.

<sup>3</sup> Costas Douzinas & Conor Gearty (eds), *The Meanings of Rights: The Philosophy and Social Theory of Human Rights* (Cambridge University Press, 2014) 1.

<sup>4</sup> Anthony J Langlois, 'Human rights: the globalisation and fragmentation of moral discourse' 28 *Review of International Studies* (2002) 479-96, 480 (emphasis in original).

<sup>5</sup> Baxi identifies six different discursive registers, or 'rubrics' of Human Rights: Human Rights as 1) ethical imperatives, 2) grammar of governance, 3) languages of global governance, 4) insurrectionary praxis, 5) juridical production, 6) culture; see Baxi (2012) 12-22.

<sup>6</sup> Douzinas & Gearty (2014) 2 (emphasis mine).

<sup>7</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice* (Cornell University Press, 1989) 18.

<sup>8</sup> Baxi (2007) 22 (emphases mine).

<sup>9</sup> Notably, the assumption holds as fundamental even to the 'controversial' argument put forward by Stephen Hopgood that we witness no possibility of rescue, that instead the actualities of human wrongs portend the 'endtimes' of Human Rights; Stephen Hopgood, *The Endtimes of Human Rights* (Cornell Uni. Press, 2015).

<sup>10</sup> See for example, Anthony J Langlois, 'Human Rights in Crisis? A Critical Polemic Against Polemical Critics' 11(4) *Journal of Human Rights* (2012) 558-70. For a contrasting view, see Ben Golder, 'Beyond

redemption? Problematising the critique of human right in contemporary international legal thought' 2(1) *London Review of International Law* (2014) 77-114.

<sup>11</sup> Out of this core problem we see branching out the debate surrounding the nature and scope of Human Rights obligations, national and international, the controversy on 'humanitarian intervention', the arguments relating to the rights of 'refugees', the debates surrounding the 'communitarian' vs 'cosmopolitan' conceptions of 'global justice' etc.

<sup>12</sup> Flowing from this, we understand the contestations regarding universalism/relativism, the debates surrounding generations of rights, the struggle for recognition of women's/'minority'/indigenous etc. rights as Human Rights, the various critiques of the possessive individualism of rights etc.

<sup>13</sup> For an eloquent critique of the 'paradox' of Human Rights in the face of governmentality, see generally Wendy Brown, 'Suffering Rights as Paradoxes' 7(2) *Constellations* (2000) 230-41; also, Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton University Press, 1995); and Wendy Brown, "'The Most We Can Hope For...': Human Rights and the Politics of Fatalism' 103 *South Atlantic Quarterly* (2004) 451. Brown's powerful argument in short is that the 'anti-politics' of Human Rights operates such that whilst providing spaces and opportunities for emancipatory articulations against domination, rights-in-sovereignty instantiate simultaneously the further entrenchment of the individual – as individual, abstract, de-personalised – into the sovereign-liberal, gendered, and economically differentiated orders of bureaucratic and regulatory power of inclusion and exclusion.

<sup>14</sup> Ratna Kapur, 'Human Rights in the 21<sup>st</sup> Century: Take a Walk on the Dark Side' 28(4) *Sydney Law Review* (2006) 665, 687 (emphases mine).

<sup>15</sup> See, Hannah Arendt, 'Perplexities of the Rights of Man', in *The Origins of Totalitarianism* (Harcourt Brace, 1951); and Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, trans. Daniel Heller-Roazen (Stanford University Press, 1998).

<sup>16</sup> See Peter Fitzpatrick, 'Is humanity enough? The Secular Theology of Human Rights' 1 *Law, Social Justice & Global Development (LGD)* (2007) available at <[www.go.warwick.ac.uk/elj/lgd/2007\\_1/fitzpatrick](http://www.go.warwick.ac.uk/elj/lgd/2007_1/fitzpatrick)> (last visited 10 July 2017); and Peter Fitzpatrick, 'The revolutionary past: decolonizing law and human rights' 2(1) *Metodo: International Studies in Phenomenology and Philosophy* (2014) 117-33.

<sup>17</sup> For his first elaboration of this expression, see Upendra Baxi, 'From Human Rights to the Right to be Human: Some Heresies' 13(3/4) *India International Centre Quarterly* (1986) 185-200.

<sup>18</sup> Baxi (2012).

<sup>19</sup> See, Jacques Ranciere, 'Who is the Subject of the Rights of Man' 103(2-3) *South Atlantic Quarterly* (2004) 297-310. Also, Jacques Ranciere, *Dissensus: On Politics and Aesthetics*, trans. Steven Corcoran (Continuum, 2010).

<sup>20</sup> See for example Joe Hoover, *Reconstructing Human Rights: A Pragmatist and Pluralist Inquiry into Global Ethics* (Oxford University Press, 2016); Anna Selmeczi & Benjamin Gregg, *Human Rights as Social Construction* (Cambridge University Press, 2013).

<sup>21</sup> As Susan Marks evocatively reminds us, violations of human-beings in their many forms of being-ness occur not in the ‘dangerous darks’ but in the ‘broad daylight’ of normality; Susan Marks, ‘Four Human Rights Myths’ (2012) LSE Law, Society and Economy Working Papers 10/2012, 13 available at <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2150155##](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2150155##)> (last visited 10 Dec. 2017).

<sup>22</sup> In this I am mindful of Baxi’s efforts to wrest Human Rights away from such Enlightenment/Modernity fabled-tellings and to invest in the idea the insurgent practice of struggles. Baxi’s delineation of the politics of and for Human Rights provides a distinct correction to the assumed givenness of Human Rights (un)reason – as he puts it. Baxi’s assertion of the centrality of struggle and insurgent action in giving Human Rights living force, again, is a corrective to many a bureaucratic and technocratic assumption of Human Rights authority. Baxi’s distinction of these opposed logics of human rights discursivity forces us to recognise that what goes by the name of Human Rights stand defined by the opposed logics and locations of enunciation – between desires of governmentality on the one hand, and imaginations and aspirations of resistance and struggle against extant orders of dispossession and cruelty on the other. Baxi’s teaching informs much of this essay, even as I take a different direction from shared initial points of departure.

<sup>23</sup> Joseph R Slaughter, ‘However incompletely, human’, in Douzinas & Gearty (2014) 272, 297

<sup>24</sup> Judith Butler, *Precarious Life: The Power of Mourning and Violence* (Verso, 2006).

<sup>25</sup> Talal Asad, ‘What do Human Rights Do? An Anthropological Inquiry’, *Theory & Event*, Vol. 4, No. 4 (2000). For a comment on Asad’s essay, and elaboration of the neoliberal content of the ‘conversion work’ of Human Rights, see Jessica Whyte, ‘Human Rights and the Collateral Damage of Neoliberalism’, *Theory & Event*, Vol. 20, No. 1 (2017), pp. 137-151. For Asad Human Rights is *more* than merely an ideal to protect humanity from abuse, it is a ‘great work of conversion’ for (a particular vision and construction of) ‘human’ redemption. The ‘more than’ in Asad’s argument retains still the assumption of the human content of Human Rights. My response to the question is different.

<sup>26</sup> I am aware that by this statement I invite all manner of protests regarding the non-essentiality of the idea of Human Rights, its openness, its indeterminacy etc. Accepting this, I maintain an argument which locates Human Rights as it operates in the world in its totality, a totality which encapsulates a range of (b)ordering rationalities wherein the contestation of the many aspirations of Human Rights, variously pursued, is subsumed and culminate.

<sup>27</sup> For an elaboration of this epochal naming – colonial-modern – as opposed to the conventional ‘modern’, see Walter D Mignolo, *Local Histories/Global Designs: Coloniality, Subaltern Knowledges, and Border Thinking* (Princeton University Press, 2000); and Walter D Mignolo, ‘The Geopolitics of Knowledge and the Colonial Difference’ 101(1) *The South Atlantic Quarterly* (2002) 56. The critical shift in perspective introduced by this ascription of coloniality to modernity is one which sees the co-constitutive relationship of emancipatory imagination and materialisation – of Europe, as Europe – with the onto-epistemology, and material violence of negation and invisibilisation of the ‘colonial’-encountered. See also, Boaventura de Sousa Santos, ‘Beyond Abyssal Thinking: From Global Lines to Ecologies of Knowledges’ XXX(1)

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Review (2007) available at <[www.ces.uc.pt/bss/documentos/AbyssalThinking.pdf](http://www.ces.uc.pt/bss/documentos/AbyssalThinking.pdf)> (last visited 10 July 2017).

<sup>28</sup> See Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton University Press, 2000).

<sup>29</sup> On coloniality, see Anibal Quijano, 'Coloniality of Power and Eurocentrism in Latin America' 15(2) *International Sociology* (2000) 215-32; Ramon Grosfoguel, 'Transmodernity, border thinking, and global coloniality: Decolonizing political economy and postcolonial studies', *Eurozine*, 4 July 2008, available at <[www.eurozine.com/pdf/2008-07-04-grosfoguel-en.pdf](http://www.eurozine.com/pdf/2008-07-04-grosfoguel-en.pdf)> (last visited 10 Dec. 2017); Mignolo (2000).

<sup>30</sup> Baxi (2012).

<sup>31</sup> I employ this term differently than Costas Douzinas for whom right-ing marks a passage of becoming-subject; see Costas Douzinas, *The End of Human Rights* (Hart, 2000) ch 5, and, 'Philosophy and the right to resistance', in Douzinas & Gearty (2014), 85. Although I appreciate that Douzinas' intention in advancing this notion of right-ing as an aspect of the 'right to resistance' is to rupture the normalisation of 'Rights' within governance regimes, I disagree that any real theoretical subversion is achieved through this manoeuvre. See below for a fuller explanation.

<sup>32</sup> Recent times have seen an apparent resurgence of interest in re-telling the progen-stories of Human Rights; two notable examples (which adopt a Eurocentric lens unsurprisingly) are: Samuel Moyn, *Last Utopia: Human Rights in History* (Belknap Press, 2012); and Lynn Hunt, *Inventing Human Rights: A History* (W.W. Norton & Co., 2008). For a 'Third World' perspective (which while critical, departs little from the essential Eurocentric story), see Jose-Manuel Barreto (ed.), *Human Rights from a Third World Perspective: Critique, History and International Law* (Cambridge Scholars Publishing, 2013).

<sup>33</sup> See, Douzinas (2014) 85. Whilst I am sympathetic to Douzinas' intentions, the apparently serious engagement with such grandiose assertions – Hegelian it might be – reveals the state of sophisticated confusion in critical Eurocentric thought. The point is more fully discussed below.

<sup>34</sup> For differently nuanced readings of the debates and subsequent theorisations of the humanity of the encountered, governed, 'Indian'; see for example, MJ Rodriguez-Salgado, "'How oppression thrives where truth is not allowed a voice": The Spanish Polemic about American Indians', in Ghurminder K Bhabra and Robbie Shilliam (eds), *Silencing Human Rights: Critical Engagements with a Contested Project* (Palgrave Macmillan, 2009) 19-42; Enrique Dussel, 'Las Casas, Vitoria and Suárez, 1515-1617', trans. James Terry, in Barreto (2013), 172; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge University Press, 2005).

<sup>35</sup> For a discussion of 'International Law' as an invention of 'encounter', see Sundhya Pahuja, 'Laws of encounter: a jurisdictional account of international law' 1(1) *London Review of International Law* (2013) 63.

<sup>36</sup> Regarding the point on license in this context, see also Sylvia Wynter's instructive reading of the debate as reflecting the transition from the Christian ontogenics of the Human to that of the secular humanist is instructive; Sylvia Wynter, 'Unsettling the Coloniality of Being/Power/Truth/Freedom: Towards the

Human, After Man, Its Overrepresentation – An Argument’ 3(3) *The New Centennial Review* (2003) 257-337.

<sup>37</sup> That before the category of (Hu)Man of Rights, prevailed prior ‘legal’ categories of ‘person-ality’, of being-subject-in-belonging, is instructive, particularly so as such ‘person-ality’ was always also associated with economic positions and relationalities; see Slaughter (2014) 297.

<sup>38</sup> See Enrique Dussel, *Philosophy of Liberation*, trans. Aquilina Martinez and Christine Morkovsky (Wipf and Stock, 2003). See also, Nelson Maldonado-Torres, ‘On the Coloniality of Being: Contributions to the Development of a Concept’, in Walter D Mignolo & Arturo Escobar (eds), *Globalization and the Decolonial Option* (Routledge, 2013) 94, 98-103.

<sup>39</sup> For a discussion on ‘sovereignty’ understood thus; see Jayan Nayar, ‘On the Elusive Subject of Sovereignty’ 39(2) *Alternatives: Global, Local, Political* (2014), 124.

<sup>40</sup> I borrow here Mignolo’s use of the term ‘humanist’ in this context; see Walter D Mignolo, ‘Who Speaks for the “Human” in Human Rights’, in Jose-Manuel Barreto (ed.), *Human Rights from a Third World Perspective: Critique, History and International Law* (Cambridge Scholars Publishing, 2013) 44-64.

<sup>41</sup> Zygmunt Bauman, ‘Utopia with no Topos’ 16(1) *History of the Human Sciences* (2003) 11. That such transfixation is not to be regarded as the ‘natural’ condition of human being-ness is effectively argued in Philippe Couton & Jose Julian Lopez, ‘Movement as Utopia’ 22(4) *History of the Human Sciences* (2009) 93.

<sup>42</sup> I adopt the ‘zero-point’ following Santiago Castro Gomez identification of ‘zero-point epistemology of Eurocentrism’; see Grosfoguel (2008), 4.

<sup>43</sup> In making this point, it is worth taking note of the argument of Samuel Moyn who effectively repudiates the assumed genealogical connection between the pasts and presents of Human Rights, between the philosophical regime of the ‘Rights of Man’, as a national construction of political inclusion and exclusion and the altogether different philosophical species that is the 1970s invention of universal Human Rights; see Moyn (2012). Moyn is generally correct, I think, in his historical differentiation of rights-regimes. But this misses the point. It is not that which is different here that is critical, but the continuities; Moyn fails to see the underlying and persistent reason of (b)ordering that I am here stressing.

<sup>44</sup> Walter Rodney, *How Europe Underdeveloped Africa* (Pambazuka Press, 2012 (1972))

<sup>45</sup> See Mignolo (2000); and Mignolo (2006) 312.

<sup>46</sup> Charles W. Mills, *The Racial Contract* (Cornell Uni. Press, 1997) See also the collection of essays in Alexander Anievas, Nivi Manchanda and Robbie Shilliam (ed.), *Race and Racism in International Relations: Confronting the Global Colour Line* (Routledge, 2015)

<sup>47</sup> Mills (1997), 41

<sup>48</sup> We remind ourselves here of Frantz Fanon’s powerful descriptor of the ‘cutting’ into two of the world between that of the right-full coloniser and the exceptionalised Other; Frantz Fanon, *The Wretched of the Earth*, trans. C Farrington (Penguin, 1967) 29. See also, Wynter (2003); Alexander G. Weheliye, *Habes Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human* (Duke University Press,

2014); Jayan Nayar, 'The Philosopher's Elusive Subject: On the Problem of the "Present" in the "Political"' 1(1) *Journal of Critical Southern Studies* (2013) 23

<sup>49</sup> See Mignolo (2002).

<sup>50</sup> Vivienne Jabri, *The Postcolonial Subject: Claiming Politics/Governing Others in Late Modernity* (Routledge, 2013).

<sup>51</sup> See Basil Davidson, *The Black Man's Burden: Africa and the Curse of the Nation-State* (Boydell & Brewer, 1992) for a discussion of the assumption and lure of state-centric 'nationalism' and its consequences.

<sup>52</sup> Partha Chatterjee makes a similar argument in, Partha Chatterjee, *The Nation and Its Fragments: Colonial and Postcolonial Histories* (Princeton University Press, 1993) 14. Also, Crawford Young, 'The End of the Post-Colonial State in Africa? Reflections on Changing African Political Dynamics' 103 *African Affairs* (2004) 23.

<sup>53</sup> Achille Mbembe, *On the Postcolony* University of California Press (2001). For a discussion of the 'imperialism of sovereignty' in this connection, see China Mieville, *Between Equal Rights: A Marxist Theory of International Law* (Koninklijke Brill, 2005)

<sup>54</sup> I think Barry Hindess was correct to so argue; Barry Hindess, 'Divide and Rule: The International Character of Modern Citizenship' 1(1) *European Journal of Social Theory* (1998) 57; and Barry Hindess, 'Neo-liberal Citizenship' 6(2) *Citizenship Studies* (2002) 127.

<sup>55</sup> When viewed from a perspective of (b)ordering, the function of the state is first and foremost to contain regulated subjects within its territories. And so we understand that the good states (as opposed to 'weak/failing/fragile' ones) of global (b)ordering are ones that effectively are able to enforce and maintain the rights-regime of license/containment/bans of subjects in relation to territory. In this respect, the greatest failure of the (postcolonial) state thus is to fail in this function of containing bodies; the spill-over of emplaced and named bodies out of their regulatory cages (of rights as containment) marks the exemplar of the 'failed state'; see below for a discussion.

<sup>56</sup> We might understand Buchanan's notion of a contextualised exercise of 'epistemic virtue' exactly in this light; see Allen Buchanan, 'Human Rights and the Legitimacy of the International Order' 14(1) *Legal Theory* (2008) 39.

<sup>57</sup> Contra, Eva Kalny, 'Against Superciliousness: Revisiting the Debate 60 Years After the Adoption of the Universal Declaration of Human Rights' 29(4) *Critique of Anthropology* (2009), 371.

<sup>58</sup> Agamben (1998).

<sup>59</sup> Nayar (2014).

<sup>60</sup> If ever a persistent and blatant reminder of such disposability of portions of 'Humanity' were needed, the on-going 'catastrophies' inflicted upon the peoples of Bhopal is in every respect – from the initial cruelty of criminal carelessness, to the indifference to mass suffering thus experienced, to the utter shamelessness of both governmental and private response – is instructive; see Upendra Baxi, 'Human Rights Responsibility of Multinational Corporations, Political Ecology of Injustice: Learning from Bhopal Thirty Plus?' 1(1) *Business and Human Rights Journal* (2016) 21.



<sup>61</sup> For an excellent treatment of this point, see Mark FN Franke, 'The Displacement of the Rights of Displaced Persons: An Irreconciliation of Human Rights between Place and Movement' 7(3) *Journal of Human Rights* (2008) 262.

<sup>62</sup> I adapt this expression from Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (Basic Books, 1984); although Walzer's use of the term pertained to a different discussion (on the borders and limits of justice) it is apt in this context as it suggests exactly the function of Human Rights to negotiate and administer the 'spheres' of differentiated 'justice' as the ascription of names and places.

<sup>63</sup> Franke (2008).

<sup>64</sup> As Mark Duffield demonstrates, the colonial strategy of 'getting savages to fight barbarians' remains powerfully an instrument of selfing and othering; precarious citizen-subjects are most often the most vocal voices against suffering others seen as a threat, as the recent Brexit and Trumpian 'victories' attest; Mark Duffield, 'Getting savages to fight barbarians: development, security and the colonial present' 5(2) *Conflict, Security and Development* (2005) 141.

<sup>65</sup> Leslie Sklair, *The Transnational Capitalist Class* (Blackwell, 2001) 17. As a useful guide to the TCC, Sklair provides the following frame of understanding. Four main 'fractions' constitute them as a totality: these are 1) the corporate fraction – TCC executives and their local affiliates 2) the state fraction – globalising bureaucrats and politicians 3) the technical fraction – globalising professionals and 4) the consumerist fraction – merchants and media.

<sup>66</sup> Matthew Sparke, 'A Neoliberal Nexus: Citizenship, Security and the Future of the Border' 25(2) *Political Geography* (2006) 151. See also, Magdalena Nowicka, 'Mobility, Space and Social Structuration in the Second Modernity and Beyond' 1(3) *Mobilities* (2006) 411.

<sup>67</sup> This clamour of belonging, and for the reclaiming of bordered control and of some mythical 'greatness', on the one hand, and the silence on the actualities of power and privilege of globalised capital and its deep penetration into the 'national' space, on the other, has been a marked feature of the on-going 'Brexit debate' in the UK, and of 'Trumpian' politics in the USA. This is not simply a trait of contemporary 'Western' political experience; not too dissimilar is the current trend of political discourse in India, Turkey, Philippines...

<sup>68</sup> Of critical importance here is to correct the misguidance of the categories of 'political-belonging/citizenship', framed through the lens of the Schmittian 'friend-enemy' distinction. Carl Schmitt, *The Concept of the Political* (Rutgers, 1927). As we know, this ontological distinction of 'friend' and 'enemy' has come to define much analyses of the 'political' within critical circles, the formula repeated and given credence even in critique. For a different view on its import, see Nayar (2014).

<sup>69</sup> See, Saskia Sassen, 'Neither global nor national: novel assemblages of territory, authority and rights' 1(1-2) *Ethics & Global Politics* (2008) 61. Also, Larry Cata Backer, 'The Structural Characteristics of Global Law for the 21<sup>st</sup> Century: Fracture, Fluidity, Permeability, and Polycentricity' 17 *Tilburg Law Review* (2012), 177

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<sup>70</sup> On the centrality of surveillance culture in contemporary governance, which brings together traditionally thought-of as distinct spheres of public/private, hard/soft regulatory regimes, see Larry Cata Backer, 'Global Panopticism: States, Corporations, and the Governance Effects of Monitoring Regimes' 15(1) *Indiana Journal of Global Legal Studies* (2008), 101.

<sup>71</sup> See Amory Starr, Luis Fernandez & Christian Scholl, *Shutting Down the Streets: Political Violence and Social Control in the Global Era* (New York University Press, 2011).

<sup>72</sup> Arundhati Roy *Capitalism: A Ghost Story* (Verso, 2015), 9-10 (note omitted)

<sup>73</sup> For a brutal demonstration of this differentiated right/lessness and the 'political ecology of injustice' as he puts it, see, Baxi (2016).

<sup>74</sup> For a discussion on 'cunning states', see Shalini Randeria, 'Between Cunning States and Unaccountable International Institutions, Social Movements and Rights of Local Communities to Common Property Resources', in Violetta Zentai and Andrea Krizsan (eds.), *Reshaping Globalization: Multilateral Dialogues and New Policy Initiatives* (New York: CPS Books, 2003), 101

<sup>75</sup> See, Didier Bigo, 'Security and Immigration: Toward a Critique of the Governmentality of Unease' 27 *Alternatives: Global, Local, Political* (2002) 63; and Didier Bigo, 'Globalized (in)Security: the Field and the Ban-opticon', in Didier Bigo and Anastassia Tsoukala (eds.), *Terror, Insecurity and Liberty: Illiberal Practices of Liberal Regimes after 9/11* (Routledge, 2008), 10

<sup>76</sup> Ibid. See also, Henry A Giroux, 'Totalitarian Paranoia in the Post-Orwellian Surveillance State', 10 February 2014, available at <<http://www.truth-out.org/opinion/item/21656-totalitarian-paranoia-in-the-post-orwellian-surveillance-state>> (last visited 10 Dec. 2017); Katja Franko Aas, '(In)Security-at-a-distance: rescaling justice, risk and warfare in a transnational age' 13(4) *Global Crime* (2012) 235.

<sup>77</sup> See, for example, Nicholas De Genova, 'The Production of Culprits: From Deportability to Detainability in the Aftermath of "Homeland Security"', 11(5) *Citizenship Studies* (2007) 421, Luca Mavelli, 'Between Normalisation and Exception: The Securitisation of Islam and the Construction of the Secular Subject' 41(2) *Millennium: Journal of International Studies* (2013) 159; and Giroux (2014).

<sup>78</sup> See ICISS, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (International Development Research Centre, 2001).

<sup>79</sup> See for example, Stephen D. Krasner and Carlos Pascual, 'Addressing State Failure' 84(4) *Foreign Affairs* (2005), 153; Sebastian Mallaby, 'The Reluctant Imperialist: Terrorism, Failed States, and the Case for American Empire' 81(2) *Foreign Affairs* (2002), 2

<sup>80</sup> Stephen Krasner, 'Sharing Sovereignty: New Institutions for Collapsed and Failing States' 29(2) *International Security* (2004), 85

<sup>81</sup> For an analysis of the evidence, see Aidan Hehir, 'The Myth of the Failed State and the War on Terror: A Challenge to the Conventional Wisdom' 1(3) *Journal of Intervention and Statebuilding* (2007), 307.

<sup>82</sup> The literature on this is abundant. See for example, Anne Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (Cambridge University Press, 2003) Eghosa E Osaghae, 'Fragile States' 17(4/5) *Development in Practice* (2007) 691; Margaret Denike, 'The Human Rights

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of Others: Sovereignty, Legitimacy, and “Just Causes” for the “War on Terror” 23(2) *Hypatia* (2008) 95; Harry Verhoeven, ‘The self-fulfilling prophecy of failed states: Somalia, state collapse and the Global War on Terror’ 3(3) *Journal of Eastern African Studies* (2009) 405; Mark Duffield, ‘Global Civil War: The Non-Insured, International Containment and Post-Interventionary Society’ 21(2) *Journal of Refugee Studies* (2008) 145

<sup>83</sup> Denike (2008)

<sup>84</sup> Caroline Holmqvist, ‘War/space: shifting spacialities and the absence of politics in contemporary accounts of war’ 13(4) *Global Crime* (2012) 219, 229 (emphases in original).

<sup>85</sup> It is worth observing the vehement refusal by some theorists of ‘justice’ of any such attempt to shift the ‘spaciality’ of political imagination in the debates surrounding ‘global justice’; see for example, Uwe Steinhoff, ‘Why “We” Are Not Harming the Global Poor: A Critique of Pogge’s Leap from State to Individual Responsibility’ 4(1-2) *Public Reason* (2012) 119; and Andrea Sangiovanni, ‘Global Justice, Reciprocity and the State’ 35(1) *Philosophy & Public Affairs* (2007) 3.

<sup>86</sup> See, Markus Kienscherf, ‘A Programme of global pacification: US counterinsurgency doctrine and the biopolitics of human (in)security’ 42(6) *Security Dialogue* (2011) 517, 524. Also Mark Duffield & Nicholas Waddell, ‘Securing Humans in a Dangerous World’ 43(1) *International Politics* (2006) 1

<sup>87</sup> Quoted in Kienscherf (2011), at 521.

<sup>88</sup> See Kienscherf (2011).

<sup>89</sup> Duffield & Waddell (2006), 2.

<sup>90</sup> Michael Dillon and Julian Reid, *The Liberal way of War: killing to make life live* (Routledge, 2009), quoted in Kienscherf, (2011) at 524.

<sup>91</sup> See Nick Vaughan-Williams, *Border Politics: The Limits of Sovereign Power* (Edinburgh University Press, 2009).

<sup>92</sup> The extension of Sassen’s analytical frame of ‘assemblages’ to understand the geographies of securitization is instructive and to point here; see Aas (2012). Also, Rita Abrahamsen & Michael C Williams, ‘Security Beyond the State: Global Security Assemblages in International Politics’ 3(1) *International Political Sociology* (2009) 1; and Rita Abrahamsen & Michael C Williams, ‘Public/Private, Global/Local: The Changing Contours of Africa’s Security Governance’ 35(118) *Review of African Political Economy* (2008) 539.

<sup>93</sup> Anthony Pagden, ‘Human Rights, Natural Rights, and Europe’s Imperial Legacy’ 31(3) *Political Theory* (2003) 171, 181. For how such universal corporate license-rights provides the antecedents of much original Human Rights imaginations and enunciations, see Slaughter (2014) 272.

<sup>94</sup> The myth of ‘development’ in this regard has long been understood; see for example, Arturo Escobar, *Encountering Development: The making and Unmaking of the Third World* (Princeton University Press, 1995); Gustavo Esteva & Madhu Suri Prakash, *Grassroots Post-Modernism: Remaking the Soil of Cultures* (Zed Books, 1998); Majid Rahnema & Victoria Bawtree (eds), *The Post-Development Reader* (Zed Books, 1997). For a

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focused perspective on the bordering functions of ‘development’ and ‘human security’ in this connection, see Duffield & Waddell (2006); and Duffield (2005).

<sup>95</sup> See, Stephen Gill, ‘Constitutionalizing Inequality and the Clash of Globalizations’ 4(2) *International Studies Review* (2002) 47.

<sup>96</sup> Upendra Baxi is correct to remind us that much of what has been achieved as recognition of rights within the understanding of the ‘political’ is the outcome of struggle against extant orders of cruelty and misery, see Baxi (2012). See also, Issa G Shivji, *The Concept of Human Rights in Africa* (CODESRIA Book Series, 1989).

<sup>97</sup> We connect here the false opposition between the Rancierian and Agambenian insights – indeed the ‘Human’ is a ‘litigious’ construct as Ranciere argues, but it is one fully encapsulated within existing biopolitical diagrams of being-subject; see Ranciere (2004).

<sup>98</sup> Seyla Benhabib, ‘The Future of Democratic Sovereignty and Transnational Law’ (Lecture at the European University Institute, Florence, 16 May 2012), available at [http://cadmus.eui.eu/bitstream/handle/1814/22565/MWP\\_LS\\_2012\\_04\\_Benhabib.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/22565/MWP_LS_2012_04_Benhabib.pdf?sequence=1) (last visited 7 Dec 2017).

<sup>99</sup> For a description of such attempts to domesticate emergence and voice, see Peter Nyers, ‘Abject Cosmopolitanism: The Politics of Protection in the Anti-Deportation Movement’ 24(6) *Third World Quarterly* (2003), 1069

<sup>100</sup> Anne McNevin, ‘Contesting Citizenship: Irregular Migrants and Strategic Possibilities for Political Belonging’ 31(2) *New Political Science* (2009), 163.

<sup>101</sup> Wendy Brown understood this well. She however misreads this as a ‘paradox’; Brown (2000).

<sup>102</sup> See for example, Anna Grear, *Redirecting Human Rights: Facing the Challenge of Corporate Legal Humanity* (Palgrave Macmillan, 2010)

<sup>103</sup> See Baxi (2012); Slaughter (2014).

<sup>104</sup> James Martel’s understanding of the ‘misinterpellated subject’ as one of radical refusal is closely connected to what I mean by desubjectification here; see James R. Martel, *The Misinterpellated Subject* (Duke Uni. Press, 2017). From a focus on individual identities of refusal however I want more to emphasise the collective anti-colonial praxis of struggle in my argument.

<sup>105</sup> For a similar argument in relation to the question of so-called ‘global justice’, see Andrew Robinson and Simon Tormey, ‘Resisting ‘Global Justice’: disrupting the colonial ‘emancipatory’ logic of the West’, 30(8) *Third World Quarterly*, (2009), 1395.

<sup>106</sup> Walter D. Mignolo ‘Epistemic Disobedience: Independent Thought and Decolonial Freedom’ 26 (7-8) *Theory, Culture & Society* (2009), 159.

<sup>107</sup> See Lindela Figlan *et al.* (Abahlali baseMjondolo and Rural Network) *Living Learning*, (Church Land Programme, 2009)

<sup>108</sup> Comandanta Esther of the EZLN, quoted in Shannon Speed, 'Dangerous Discourses: Human Rights and Multiculturalism in Neoliberal Mexico' 28(1) *Political and Legal Anthropology Review* (2005), 29. The recent Sioux nation-led protest in Standing Rock against the North Dakota Access Pipeline is a powerful current example of what I mean by refusal and the semantics of struggle. The emphases of the indigenous communities on prayer and the spirituality of their struggle for 'water as life' – as opposed to their 'right to water' – affirms the 'other' philosophoscapes that refuse the categories of being sought to be imposed through the colonial-state regimes of subject-names and property-rights; see for example, Jack Jenkins 'The growing indigenous spiritual movement that could save the planet' at <https://thinkprogress.org/indigenous-spiritual-movement-8f873348a2f5#.ajsz8onmn> (last visited 11 Dec. 2017)

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